

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

**FILED**

JUN 29 1984

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
JAMES E. VANDEGRIFT, CLERK

FREDERICK MCGILL, individually and )  
in behalf of all others similarly )  
situated, )

Plaintiff, )

v. )

CIVIL ACTION NO. 74-G-0692-S

ARTHUR DEUTCSH, in his capacity as )  
Chief of Police of the City of )  
Birmingham, Alabama; CAPTAIN JESSIE )  
SPRAYBERRY, in his capacity as )  
Chief Warden of the Birmingham City )  
Jail; SGT. WILLIAM T. GAUT; CHRISS )  
DOSS, President of Jefferson County )  
Commission; JEFFERSON COUNTY, )  
ALABAMA, a political subdivision of )  
the State of Alabama; RAY MOORE and )  
DAVID ORANGE, in their representa- )  
tive capacities as County )  
Commissioners of Jefferson County, )  
Alabama; MEL BAILEY, in his )  
capacity as Sheriff of Jefferson )  
County, Alabama; POLLY CONRADI, as )  
Circuit Clerk of the Circuit Court )  
of Jefferson County, Alabama; and )  
the CITY OF BIRMINGHAM, a municipal )  
corporation of the State of )  
Alabama, )

Defendants. )

**ENTERED**

JUN 29 1984

ORDER

This order supersedes in all respects all other orders  
heretofore entered in this case.

This cause came to be heard before the court on motion  
of defendants to dismiss the complaint and on motion of the plain-  
tiff, individually and on behalf of all others similarly situated,

for summary judgment and request for further relief. Having considered the applicable law, pleadings, and submissions of counsel, the court is of the opinion that the defendants' motion to dismiss is due to be overruled. The court further concludes that there is no genuine issue as to any material fact, that there is no just cause for delaying entry of judgment, and that plaintiff is entitled to judgment as a matter of law. Accordingly, it is

ORDERED, ADJUDGED and DECREED that the defendants' motion to dismiss be and it hereby is DENIED, and that plaintiff's motion for summary judgment and other relief be and it hereby is GRANTED. It is

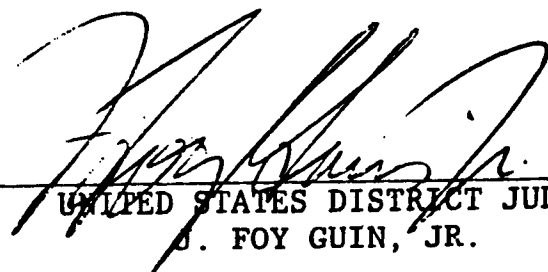
FURTHER ORDERED that plaintiff's class be and it hereby is again certified to consist of those persons who are presently incarcerated or who become incarcerated in the Birmingham City Jail on possible felony charges.

Because of the defendants' disregard of this court's prior orders, the court has determined that the defendants shall be and hereby are ORDERED to institute, within ten (10) calendar days of receipt of this order, the Arrest Procedure which is attached to and is an integral part of this order.

It is FURTHER ORDERED that this cause be and it hereby is DISMISSED, with the court retaining jurisdiction for the sole purpose of enforcing its judgment.

Costs of this litigation are taxed against the defendants.

DONE and ORDERED this 29th day of June 1984.



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UNITED STATES DISTRICT JUDGE  
J. FOY GUIN, JR.

## ARREST PROCEDURE

### Purpose:

It is the intent of this procedure to ensure that any individual arrested by the Birmingham Police Department on a possible felony charge be served with a warrant and transferred to the Jefferson County Jail within eight (8) hours of said arrest. The City of Birmingham is DIRECTED not to use such time limit as being acceptable in every case, as the mandate of this order is to complete the normal and customary administrative steps as soon as is reasonable and that eight hours is not to be defined as "reasonable" in each and every case.

### A. Warrantless Felony Arrest

1. The individual who is arrested without a warrant shall be delivered immediately to the Birmingham City Jail.
2. In accordance with present procedure, the arresting officer shall complete in detail the "arrest report" form, including but not limited to information surrounding the date, time, and circumstance of the arrest.
3. A copy of the arrest report shall be forwarded to the booking officer who shall make the appropriate entries on the booking docket as well as on the arrest report. The booking officer shall retain both documents for his records.

4. Additional copies of the arrest report shall be forwarded through normal channels to the appropriate city detective for initiation of the procedures designed to secure a valid arrest warrant from a neutral and detached magistrate. Said warrant shall include an appropriate bond as determined by the magistrate.

5. Service of the warrant properly obtained obtained from the magistrate shall mandate that the defendant be transferred from the Birmingham City Jail to the Jefferson County Jail on the strength of said warrant.

6. The procedure as outlined above shall be completed within eight (8) hours from the time of arrest as indicated on the arrest report.

7. If the routine procedure as outlined above shall not be completed within the specified time frame, a substitute warrant shall automatically issue which supersedes the warrant that would normally have been obtained through a magistrate.

8. The substitute warrant shall issue on the basis of the arrest report which is held by the booking officer in accordance with paragraph A.3. above.

9. The arrest report contains line 13, "formal charge," and line 37, "narrative," which shall be utilized to determine the proper category of the crime charged.

10. Determination of the proper category of the charge shall be made by the detective assigned to the case and entry of said determination shall be made on the reverse side of the arrest report.

11. The detective shall also enter the appropriate bail which corresponds to the category of the crime charged. Said bail shall be predetermined and is hereby established as the lowest amount delineated in the "Discretionary Bond Schedule--Recommended Range," Rule 2(B), Alabama Rules of Judicial Administration:

<u>Category</u>	<u>Value of Bond</u>
Class A Felony	\$1,000.00
Class B Felony	\$750.00
Class C Felony	\$500.00
Unclassified Felony	\$500.00

Alabama Rules of Court 1984 Desk Copy, at 613 (West 1984).

12. For crimes involving violence, personal injury, or when the defendant is armed with a deadly weapon, the following schedule shall be utilized in lieu of that described in paragraph A.11. above:

<u>Category</u>	<u>Value of Bond</u>
Capital Felony, as defined by Section 13A-5-40, <u>Ala. Code</u> (1975).	NO BOND
Murder, as defined by Section 13A-6-2, <u>Ala. Code</u> (1975)	\$10,000.00
Class A Felony	\$5,000.00
Class B Felony	\$2,000.00
Class C Felony	\$1,500.00
Unclassified Felonies	\$1,500.00

13. When completed by the detective, the arrest report shall include a properly categorized charge and an appropriate bond set in accordance with paragraphs A.11. and A.12. above. At the expiration of the time limit specified herein the arrest report shall substitute for the warrant with bond which would have issued from the magistrate. The warden of the Jefferson County Jail is hereby DIRECTED to accept this "arrest report--bail warrant" for the purposes of transferring the defendant from the Birmingham City Jail into the custody of the Jefferson County Jail.

14. The detective is hereby DIRECTED to immediately transfer the defendant to the Jefferson County Jail upon the authority of the "arrest report--bail warrant." If no alternative means of transportation is available, the detective is hereby ORDERED to personally deliver the defendant to the County Jail within the specified time limitation.

15. Once the specified time limitation has lapsed, the bail which has been set on the "arrest report--bail warrant" can in no way be altered by any city or county officials or by a magistrate. Bail may be increased only by order of a state district judge, issued at the first preliminary hearing held by that court.

B. Extensions

The court recognizes that there exists a danger to society if a defendant is released prior to adequate investigation. To prevent the premature release of an individual who poses a threat to society, an extension of the specified time limitations may be secured in accordance with the procedure detailed below:

1. The court emphasizes that the extension is to be sought only in exceptional circumstances.

2. Exceptional circumstances shall include, but are not limited to, instances in which there is reasonable belief



that the arrestee has committed a crime involving serious personal injury or when adequate investigation requires fingerprint comparison, scientific testing, laboratory reports and the like.

3. To procure an extension of the proscribed detention time, the investigating officer or any officer with a sufficient knowledge of the case may make application to a magistrate of this court or to a circuit judge of the Tenth Judicial Circuit of Alabama.

4. Extensions shall be granted upon written order filed with the office of the clerk of the court issuing said order.

5. The extension order shall delineate the specific facts which give rise to a finding of exceptional circumstances and warrant an extension of the time limitation.

6. During non-business or non-court hours extensions may be granted orally through telephonic communication provided that the granting authority enters the required order at the beginning of the next regularly scheduled business day.

7. The maximum extension of detention time available under this procedure is forty (40) hours, constituting a total possible detention time of up to forty-eight (48) hours.

8. Any application for an extension which would result in a total detention time in excess of forty-eight (48)

hours must be made directly to this court. The procedure for making application to this court shall be identical to that described above.

9. Applications for extensions shall be reported to this court on the monthly report form described in paragraph D.3. of this order. If the extension is granted, the date of entry of the extension order and the granting authority shall also be included in the monthly report.

C. Felony Arrest With Outstanding Warrant

1. If an arrest warrant has been issued prior to the physical arrest, there is no need whatsoever for detention in the Birmingham City Jail. It is hereby ORDERED that defendants arrested pursuant to an outstanding warrant shall be taken directly to the Jefferson County Jail and that the warden of said facility shall take custody of these defendants on the basis of the outstanding warrant.

2. The warden of the Birmingham City Jail is hereby ENJOINED from taking custody of defendants apprehended on an outstanding arrest warrant.

D. Reporting

The court is of the opinion that a reporting system is required so that compliance with the procedural requirements established herein is ensured.

1. The Chief of Birmingham Police Department is hereby ORDERED to furnish the court with a monthly report which includes but is not limited to the defendant's name, case number, date and time of arrest and booking, date and time of service of warrant, source of the warrant (i.e., magistrate or arrest report), date and time of final disposition (i.e., transfer to County Jail or release), and the total time that defendant remained in the custody of the Birmingham Police Department.

2. The Warden of the Jefferson County Jail is hereby ORDERED to supply the court with corresponding information on each defendant, including but not limited to the date and time of defendant's arrival at the Jefferson County Jail, date and time of booking, and final disposition (i.e., released on bond, remained in custody, etc.).

3. The defendants shall prepare a reporting form so that all of the information supplied in accordance with paragraphs D.1., D.2., and B.9. is presented in one combined, completed form. A proposed reporting form shall be submitted to the court within twenty (20) days of entry of this order. Upon approval by

the court said form and its attendant reporting procedure shall be instituted at both the City and County levels.

4. This reporting system shall remain in effect until such time that adequate procedures have been instituted which safeguard the constitutional rights of the prisoner. The defendants may be relieved of the reporting requirements delineated herein upon their motion and subsequent determination by the court that the procedures and safeguards have been established, instituted, and are functioning satisfactorily.

E. Miscellaneous

To give complete relief to the plaintiff class in this case, the court finds that it is necessary to enjoin the Birmingham Police Department from requiring that the arrestee make a statement to a police officer prior to having a bond set. To ensure that those incarcerated are informed of their rights, the court hereby ORDERS that the Birmingham Police Department form #144 (Rev. 11/76) be revised to include paragraph 6. as shown in attached Exhibit A.

EXHIBIT A

Facsimile of Birmingham Police Department Form #144 (Rev. 11/76)

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BIRMINGHAM POLICE DEPARTMENT

CASE # \_\_\_\_\_

Before asking you any questions, it is the law that you must be advised of your following Constitutional rights:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and have him present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one.
5. If you wish to answer questions now without a lawyer present you still have the right to stop answering at any time.
6. It is not necessary that you answer questions posed by a detective or any other Birmingham Police Department official, prior to having a bond set by the court.

\_\_\_\_\_  
Police Officer, City of Birmingham

I have read the above and understand fully each of these rights. Having these rights in mind I wish to make a voluntary statement and answer any questions without contacting an attorney or having one present. No force, threats, or promises have been used by anyone in any way to make me sign this, and I sign this statement after having been orally advised of my Constitutional rights set out above, and understanding them in full.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_

WITNESS \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_

SIGNATURE REFUSED ( )

POLICE #144 (REV. 11/76)